

# MALPRACTICE CASEBOOK



## Did high spinal during cesarean cause maternal brain damage?

LOS ANGELES COUNTY (CALIF) SUPERIOR COURT—When a gravida who had 3 prior cesareans presented to a hospital for a breech delivery, the physician opted to perform another cesarean. During the procedure, the patient stopped breathing, and her heart rate dropped significantly. The obstetrician temporarily halted the surgery to insert an endotracheal tube to ensure proper breathing. When the gravida's vitals returned to normal, he resumed the cesarean section and delivered a healthy infant.

One hour later, during a CT scan, it was discovered that the endotracheal tube had become dislodged. A code blue was issued, but the patient had already developed hypoxic anoxic encephalopathy. She is now in a vegetative state and requires lifetime subacute care.

In suing, the patient's husband claimed that his wife suffered a high spinal, whereby the anesthesia level had risen above her rib cage, restricting her breathing and depriving her brain of oxygen. He maintained that the doctor failed to recognize the high spinal and to properly secure the endotracheal tube.

The physician argued that the patient suffered either an air embolism or an amniotic fluid embolism during delivery, resulting in massive brain damage.

The jury awarded the plaintiff \$5,524,163.

## Lack of further testing blamed for missed cancer

ORANGE COUNTY (NY) SUPREME COURT—After a routine examination in March 1998 showed an abnormal Pap result, a woman underwent a number of tests, including a CA-125, transabdominal and transvaginal ultrasound tests with color Doppler flow studies, endocervical curettage, and an endometrial biopsy to rule out endocervical cancer. The test results were normal, and a follow-up Pap in August 1998 also was normal. However, in January 1999, the patient was diagnosed with advanced-stage ovarian cancer. At

that time, she had an abdominal hysterectomy followed by chemotherapy.

In suing, the woman claimed that because she had a family history of breast and ovarian cancer, the physician also should have performed a laparoscopy and referred her to a gynecologic oncologist.

The physician argued that since the laboratory and imaging results were all normal, there was no indication to perform additional testing. She believed the abnormal Pap was probably a false-positive reading. Lastly, she maintained that the ovarian cancer was not present during the tests performed in 1998 and that it most likely developed 2 to 4 months prior to diagnosis.

The jury returned a defense verdict.

## Forceps blamed for infant's eye injury

SAN DIEGO COUNTY (CALIF) SUPERIOR COURT—After an Ob/Gyn delivered a baby via forceps and vacuum extraction, the nurses noticed that the infant's right eye was swollen and opaque. The child was later diagnosed with a corneal tear and would have to undergo a cornea transplant by age 1.

In suing, the parents contended that the obstetrician misapplied the forceps during the course of delivery, resulting in the corneal tear.

The physician argued that he did not apply the forceps improperly. Instead, other factors such as bony prominence or vacuum suction caused the eye injury.

The jury awarded the plaintiffs \$425,000.



## Did improper trocar placement cause pain, incontinence?

DELAWARE COUNTY (PA) COURT OF COMMON PLEAS—During a workup for infertility, a physician discovered that his patient had a tubal obstruction and performed an exploratory laparoscopy. During the procedure, the woman suffered internal bleeding from a lacerated left iliac vein. A vascular surgeon then performed an emergency laparotomy to repair the vein and

*continued on page 114*

# MALPRACTICE CASEBOOK

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achieve hemostasis.

In suing, the woman claimed that during the laparoscopy, the physician inserted the trocar at an improper angle, resulting in the laceration of her left iliac vein. Although the injury was repaired, the patient maintained that it caused vascular congestion, which compressed her back nerves, making it difficult for her to sit for long periods of time without experiencing pain. She also allegedly suffers from urinary incontinence and, as a result, has been unable to work.

The physician argued that the patient had chronic back pain prior to the laparoscopy and that the procedure and injury caused no further damage.

The jury awarded the plaintiff \$1.2 million and also awarded her husband \$100,000 for pain and suffering.

## Undetected lymphoma results in unnecessary mastectomy

MARICOPA COUNTY (ARIZ) SUPERIOR COURT—A 35-year-old gravida in her sixth month of pregnancy noticed a pea-sized mass in her right axilla in March. By mid-April, the mass had grown to the size of a lemon.

The patient was referred to a general surgeon who performed a mammogram and a true-cut biopsy of the large mass. The initial pathology reading noted a malignant and anaplastic tumor. The local pathologist confirmed that the primary site of the mass was most likely the breast. However, metastasis from another site, other than the breast, could not be ruled out. The surgeon scheduled the patient for a modified radical mastectomy.

During the procedure, the surgeon excised a large tumor from the axillary tail of the breast, extending into the axilla and involving multiple lymph nodes. The entire tumor was not resected, as it was wrapped around some nerves.

The mastectomy specimen was then sent to a regional pathology center and a diagnosis of anaplastic large cell lymphoma was made by the consulting pathologist. The patient underwent 1 course of chemotherapy before her child was prematurely delivered via cesarean. Later,

the woman underwent additional chemotherapy and 2 breast reconstruction surgeries.

In suing, the patient contended that had she been properly diagnosed with lymphoma, she would not have needed a mastectomy. The woman also maintained that the physician should have carefully reviewed the pathology report and that he should have known the mass was not resectable.

Further, she claimed that the pathologist should have asked for more tissue samples prior to the surgery so that a definitive diagnosis could be reached.

The surgeon and pathologist argued that the interpretation of the preoperative biopsy specimen was appropriate and within the standard of care. Further, regardless of the possible metastasis from another site, the surgeon was properly advised to proceed with the mastectomy.

The jury returned a verdict for the defense.

## Did delayed cesarean lead to hemiparesis?

BRONX COUNTY (NY) SUPREME COURT—A gravida was admitted to a hospital at 41 weeks' gestation for delivery and was placed on an external fetal heart rate (FHR) monitor. The tracing revealed late decelerations with every contraction from 4:15 a.m. to 5:06 a.m.

**The Ob/Gyn argued that the fetal monitor indicated that the bleeding occurred in utero.**

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When the obstetrician did an amniotomy at 5:10 a.m., meconium was found. A cesarean delivery was subsequently performed at 7:35 a.m.

At birth, the baby's Apgar scores were normal. However, an MRI performed later that day revealed intracranial bleeding. The infant developed right-side hemiparesis of the lower extremity, requiring physical therapy and surgery for tendon release. He now walks with a limp.

In suing, the mother claimed that the FHR tracing clearly showed signs of fetal distress. She further maintained that the physician unnecessarily delayed delivery for more than 3 hours and that the infant's bleeding occurred during labor.

The obstetrician argued that the fetal monitor, if at all nonreassuring, indicated that the bleeding occurred prior to labor and delivery.

The jury awarded the plaintiff \$1.25 million.

*The cases presented here were compiled by Lewis L. Laska, editor of Medical Malpractice Verdicts, Settlements & Experts. While there are instances when the available information is incomplete, these cases represent the types of clinical situations that typically result in litigation.*